

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

March 4, 2005

**DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Case Name: Personal Security Hearing

Date of Filing: June 23, 2004

Case Number: TSO-0115

This Opinion concerns the continued eligibility of XXXXXXXXXXXX (hereinafter referred to as the "Individual") to hold a level "Q" access authorization under the regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." For reasons discussed below, it is my opinion that the Individual's access authorization should be restored.

I. Background

Since 1989, the Individual has been employed by a Department of Energy (DOE) contractor located at a DOE facility. The Individual held a "Q" clearance enabling him to perform work at the facility.¹ In July 2002, the Individual reported to a local security office that he had sought treatment for an alcohol problem. In November 2002, the DOE conducted a Personal Security Interview (PSI) with the Individual. Based on that information and the diagnosis of alcohol abuse by a DOE contracted consultant-psychiatrist, the DOE suspended the Individual's security clearance.

The DOE issued a Notification Letter dated April 22, 2004, which commenced the administrative review process. In that letter, the Individual was informed that the DOE was in possession of information which created a substantial doubt concerning his continued eligibility for a "Q" access authorization in accordance with 10 C.F.R. § 710.8(h) and (j). Specifically, the Notification Letter stated that the Individual suffered from an alcohol problem which causes or could cause a defect in his judgment or reliability.

¹ A level "Q" access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Opinion as access authorization, security clearance, or "Q" clearance.

II. The Record

The record, which was largely uncontested, showed that the Individual was diagnosed as suffering from alcohol abuse. In August 2002, the Individual reported that he had a problem with alcohol to a local DOE security office. Hearing Exhibit (Ex.) 2 at 2. Consequently, a PSI was conducted in November 2002. During this interview, the Individual revealed that he started attending Alcoholics Anonymous (AA) meetings, because he recognized that he had a drinking problem. Ex. 11 at 9. He stated that during a summer vacation in 2002, he “blacked out” after drinking two six-packs of beer and eight or nine mixed drinks. *Id.* at 10-11. Upon returning from his vacation, he experienced a second blackout after consuming four or five drinks. *Id.* at 11. The Individual also stated that his alcohol consumption began to increase beginning in 1996 and 1997. Subsequently, the Individual’s consumption of alcohol increased to four or five mixed drinks per night. *Id.* at 16-17. His alcohol use had a negative impact on his relationship with his spouse and also affected his work attendance. *Id.* at 18-21.

In April 2003, the Individual was evaluated by a DOE consulting psychiatrist (DOE psychiatrist). Although the Individual had not consumed alcohol since July 15, 2002, the DOE psychiatrist determined that it was too early in the Individual’s recovery process to show adequate evidence of rehabilitation or reformation. Ex. 8 at 3, 7. Accordingly, he diagnosed the Individual with “alcohol abuse, without psychological dependence in early full remission.” *Id.* at 6. Consequently, the DOE psychiatrist concluded that the Individual had an illness or mental condition which causes or may cause a defect in judgment and reliability. *Id.* at 7. The DOE psychiatrist reported that, in the past, the Individual lied about his drinking habits to his spouse, drove his car while under the influence and became irritated when others discussed his drinking. *Id.* at 4. However, the DOE psychiatrist also noted that during the course of the evaluation the Individual readily identified himself as an “alcoholic.” *Id.*

On May 4, 2004, the Individual requested a hearing regarding the allegation described in the Notification Letter. The Individual’s request for a hearing was forwarded by the local security office to the Office of Hearings and Appeals of the DOE. On June 30, 2004, I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), a hearing was convened in October 2004.

III. The Hearing

At the hearing, the Individual was represented by counsel and the following witnesses were called to testify: (i) the Individual; (ii) the DOE psychiatrist; (iii) a DOE staff psychologist; (iv) the Individual’s psychiatrist in private practice; (v) a co-worker; and (vi) the Individual’s spouse.

1. The Individual

The Individual testified that he has not consumed alcohol since July 15, 2002. Hearing Transcript (Tr.) at 34. He stated that on average he currently attends five or six AA

meetings a week, has a sponsor, and acts as a sponsor for two other members with alcohol dependency issues. *Id.* at 35. He stated that his problem with alcohol was intertwined with problems he experienced as a result of being subject to continuing sexual abuse as a youth. *Id.* at 36. The Individual sought treatment with a counselor concerning the issues raised by the abuse. *Id.* at 37. In therapy, he has accomplished the goal set by the counselor of not letting the memories of the abuse exercise power over him. *Id.* at 38, 48. The counselor consequently ended her treatment of the Individual upon her retirement. *Id.* at 61; *see* November 5, 2004 facsimile from Individual's counsel to Hearing Officer. He testified that he is also being treated for depression by his psychiatrist. *Id.* at 45. The Individual further stated that he is no longer involved with other support groups or receiving regular counseling concerning sexual abuse issues, but states that he presently relies on support from his friends in AA, his family and, to a lesser extent, his psychiatrist.² *Id.* at 40, 45. The Individual also testified that he recently received an award from his employer for his role in developing patented software. *Id.* at 30.

2. The DOE Psychiatrist

The DOE psychiatrist testified about the psychological assessment of the Individual, which he conducted in April 2003. He stated that in the course of this evaluation, the Individual discussed two episodes which occurred during the summer of 2002 where he blacked out after heavy drinking. Tr. at 11. The DOE psychiatrist also stated that as a result of the evaluation, he diagnosed the Individual with alcohol abuse and a moderate recurrent depressive disorder. *Id.* at 11, 15. Although the DOE psychiatrist testified that at the time of the April 2003 evaluation the Individual was sober for nine months, appeared to be "making very good progress," and "readily accepted [...] the label of alcoholism and the need for treatment," he ultimately concluded that not enough time had elapsed to show that the Individual was adequately rehabilitated. *Id.* at 16-17. During the hearing, the DOE psychiatrist evaluated the Individual's current condition. He posed questions to the other medical professionals and the witnesses about the Individual's recovery progress. At the conclusion of the hearing, the DOE psychiatrist commented that it appeared that the Individual had resolved the major issues which had influenced his drinking behavior and that the Individual was rehabilitated and reformed from his alcohol problems. *Id.* at 77-79.

3. The DOE Staff Psychologist

The DOE staff psychologist testified that the Individual approached him for a professional evaluation in October 2003. Tr. at 19. The DOE staff psychologist noted that the DOE did not require that the Individual receive treatment, but rather that the Individual was looking for another "professional that could evaluate him and, if favorable, provide some support that he had successfully achieved rehabilitation or to give him further direction as to what else he would need to do to achieve that." *Id.* The DOE staff psychologist testified that during the evaluation, he believed that the Individual "was already doing everything that I would have recommended him to do"

² The local security office has not raised as a potential concern the Individual's depression.

such as receiving therapy and regularly attending AA meetings. *Id.* at 20. The DOE staff psychologist also noted that, at the time of the hearing, the Individual was sober for over two years and stated that “he’s got an excellent start on what hopefully will be lifelong recovery.” *Id.* at 21. The DOE staff psychologist also noted the signs that he believe indicated a positive prognosis for the Individual’s alcohol problem: first, the Individual had over two years of abstinence from alcohol; second, he was participating well in an Alcoholics Anonymous program, third he was receiving treatment for his depression; and last, the Individual had good family and work support. *Id.* at 21.

4. The Individual’s Psychiatrist

The Individual’s personal, board-certified psychiatrist testified via telephone. The psychiatrist stated that he stood by the representations that he made concerning the Individual’s progress in a letter dated October 2004 (October Letter) and submitted into the record of this hearing. Tr. at 65-66. The letter reads that “given that it has been greater than two years since his last drink, I am of the opinion that he is in remission from his alcohol abuse and I see no evidence to indicate that he would relapse.” October Letter at 1. When asked how he would characterize the Individual’s progress concerning his depression, the psychiatrist stated, “I think my note says he is in full remission from his depression. Basically, he has been on antidepressants, which I intend to keep him on, and basically has no symptoms of depression at this point.” Tr. at 67-68. The Individual’s psychiatrist also testified that he had no concerns about the Individual no longer being in therapy for issues related to the sexual abuse and that the Individual “has done probably a sufficient amount of work on that [sexual abuse-related mental health issues].” *Id.* at 67.

5. The Co-Worker

A co-worker testified that he has known the Individual for nearly twenty-five years and has interacted with him on both professional and personal levels. Tr. at 55, 59. He has known the Individual since 1980 and currently spends time with the Individual and his family approximately twice a month. *Id.* at 60. The co-worker testified that the Individual has been very forthcoming about his alcohol problems as well as the subject of his sexual abuse. *Id.* at 56. He also stated that, to his knowledge, the Individual has not consumed any alcohol since the late summer of 2002. *Id.* at 62. He further testified that the Individual would likely confide in him if the problems resurfaced. He stated that he normally sees the Individual socially a couple of times a month and has seen no indication that he is “backsliding.” *Id.* at 61. The co-worker testified that he had no doubts about the Individual’s judgment or reliability. *Id.* at 57.

6. The Individual’s Spouse

Testifying by telephone, the Individual’s spouse stated that he is “extremely dedicated” to remaining abstinent from alcohol and that she believed he would continue to attend AA meetings. Tr. at 70. She stated that he confronted the drinking problem “rather quickly” and felt he was “doing remarkably well” in the recovery process. *Id.* at 72. When asked whether she noticed a change in her husband since he first admitted his problem with

alcohol, his wife noted, “Yes, I think that he is much more at peace with himself now.” *Id.* at 74.

V. Standard of Review

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In resolving questions about an individual’s eligibility for access authorization, I must consider relevant factors and circumstances connected with the individual’s conduct which are set forth in § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of the individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

A DOE administrative review proceeding under 10 C.F.R. Part 710 is authorized when the existence of derogatory information leaves unresolved questions about an individual’s eligibility for access authorization. A hearing is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has presented derogatory information affecting an individual’s eligibility for access authorization, the individual must come forward with evidence to convince the DOE that restoring his or her access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” *See, e.g., Personnel Security Hearing, Case No. VSO-0013*, 25 DOE ¶ 82,752 at 85,511 (1995). The DOE regulations were amended in 2001 to state that any doubt regarding an individual’s eligibility for access authorization shall be resolved in favor of the national security. 10 C.F.R. § 710.7(a).

VI. Analysis

The Notification Letter identifies the criteria in 10 C.F.R. § 710.8(h) and (j) as the grounds for suspending the Individual’s security clearance. Both criteria center around the Individual’s admitted alcohol problems. It is beyond dispute that a diagnosis of alcohol abuse or dependence raises security concerns. *See, e.g., Personnel Security Hearing, Case No. VSO-0243*, 27 DOE ¶ 82,808 (2002). As described above, given the Individual’s well documented problem with alcohol, the local security office had more than sufficient grounds to invoke Criteria H and J. Nevertheless, I find that the concerns detailed in the Notification Letter were mitigated by the testimony of the DOE

psychiatrist, the DOE staff psychologist and the Individual's psychiatrist, which indicate that the Individual is rehabilitated and reformed from his alcohol problem.

As previously discussed, the DOE psychiatrist evaluated the Individual in April 2003 and diagnosed the Individual with "alcohol abuse, without psychological dependence in early full remission." At that time, the psychiatrist also noted that the Individual was sober for nine months and was "making very good progress." Tr. at 16. However, following that evaluation, he concluded that it was too soon to determine whether the Individual was completely rehabilitated.

Since that evaluation, a year and a half have passed. By the time of the hearing in October 2004, the Individual had abstained from alcohol for two years and three months. In addition, during the hearing, the DOE psychiatrist examined the Individual and questioned the other medical professionals. At the conclusion of the hearing, the DOE Psychiatrist stated that the Individual's alcohol misuse was related to the sexual abuse in his past. *Id.* at 77. The DOE psychiatrist commented that the Individual had "slay[ed] this dragon of the trauma and abuse that you [the Individual] had experienced." *Id.* at 78. He went on to note that the Individual had completed two years of sobriety and had built "a good solid life emotionally and psychologically" without alcohol. *Id.* at 78. He was also encouraged by the fact that the Individual had not experienced any cravings or dreams about consuming alcohol. *Id.* at 78. At the end of the hearing, the DOE psychiatrist stated that, in his opinion, the Individual was rehabilitated and reformed in accordance with the regulations that govern security clearances. *Id.* at 78-79.

The DOE staff psychologist also characterized the Individual's recovery in positive terms. He testified that the Individual approached him of his own volition for his professional evaluation in October 2003. Tr. at 19. The DOE staff psychologist noted that, at the time of the consultation, he believed that the Individual was already taking the recommended steps to curb his problem with alcohol, such as attending AA meetings and seeing a psychiatrist on a regular basis. *Id.* at 20. At the conclusion of the hearing, the DOE staff psychologist stated that, in his opinion, the Individual no longer had "any major issues unresolved at this point" with respect to the underlying trauma regarding the past abuse the Individual suffered. *Id.* at 76. Lastly, the DOE staff psychologist concluded that he did not believe that the Individual presented any significant risk regarding a security clearance. *Id.* at 77.

At the hearing, the Individual's psychiatrist also stated that the Individual was currently under his care, and that he prescribed anti-depressants to treat the Individual's depression and that the Individual currently has no symptoms of depression. Tr. at 67-68. The psychiatrist also asserted that the Individual had not consumed alcohol since July 2002 and that he was confident that the Individual would not experience a relapse. *Id.* at 68; October Letter at 1. The Individual's psychiatrist stood by his October 2004 Letter in which he opined that given the Individual's two years of abstinence from alcohol, he believes that the Individual is in remission from his alcohol abuse and that he saw no evidence that the Individual would relapse. *Id.* at 66; October Letter at 1.

In addition, one of the Individual's co-workers and his spouse testified on his behalf. Both affirmed that the Individual had not consumed alcohol in more than two years. *Id.* at 60, 71. The Individual's wife described him as being committed to remaining abstinent. *Id.* at 70. His co-worker testified that the Individual was open and honest about his drinking problem and the other issues in his life. *Id.* at 56.

In sum, the testimony of the medical professionals as well as that of the Individual's spouse and co-worker demonstrates that the Individual has not consumed alcohol in over a two years and is rehabilitated from his alcohol problems. Therefore, the Individual has provided sufficient evidence to resolve the concerns in the Notification Letter, and should be granted access authorization.

VII. Conclusion

For the foregoing reasons, I have concluded that the Individual has presented adequate mitigating factors to lessen the legitimate security concern of the DOE under 10 C.F.R. § 710.8(h) and (j). In view of the record before me, I am persuaded that restoring the Individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, it is my decision that the Individual be granted access authorization. Review of this Decision by an Appeal Panel may be sought under the regulation set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: March 4, 2005